

**Written Comments – Senate Bill No. 129 sponsored by Senator Dave Lewis  
Wednesday – January 4, 2009  
Senate Taxation Committee Hearing**

Richard E. Grady  
9312 Lincoln Road West  
Canyon Creek Montana 59633

Chairperson Senator Jeff Essmann and members of the Senate Taxation Committee

I have submitted written comments, with supporting documentation regarding my support of Senate Bill No 120 sponsored by Senator Dave Lewis, and would appreciate some clarification and possible amendments that need to be addressed.

I also have attached my written comments that I provide as testimony on Wednesday – January 21, 2009 to the Chair and members of the Senate Natural Resources Committee regarding the committee hearing on Senate Bill 129.

My family has been involved with a conservation easement for the past 10 years with the Montana Fish, Wildlife and Parks Department on it' family ranching operation. This commitment took several years to work out the details regarding the terms of the conservation easement and in minds of the family members this would be the right decision for years to come.

I support the voluntary decision a private landowners choose when entering a conservation easement with a viable land trust such as the Prickley Pear Land Trust, Montana Land Reliance, along with the Montana Fish, Wildland and Parks Department.

What I **do not support** is the language in which the Montana Department of Natural Resource and Conservation (DNRC) would become a third party regarding the voluntary relationship between a landowner and a land trust in Montana. My families involvement with the FWP is whom we work with regarding the terms of the conservation easement, annual on site reviews and any coordination with land management decisions as required under the conditions of the conservation easement. Both parties have the ability to hire and/or obtain outside professional land management resources regarding timber management plans, etc.

The agency is **not a land trust that works with private land owners** such as FWP and other land trusts in our state, with the exception of state statues regarding the management of school trust lands in Montana.

A landowner should be allowed to enter into a voluntary private land wildfire mitigation policy with a recognized land trust organization in Montana or if FWP chooses under its conservation easement program to enter this type of program.

I have outlined what I see is lacking in the language of the bill:

- There is no definition of local government pertaining to fire departments, county commissioners, etc
- The location of any development must be approved by the voluntary wildfire mitigation conservation easement holder, and approval granted only after a written certification is provided by the property owner that a professional forester and the department both agree on the location of the proposed development with fire protections in the wildland-urban interface. Nothing is mention that the landowner or the local fire department under a Rural Fire District or Fire Service Area has any input on this wording and is a signature to the documents being required under the bill.
- Under the wording of sound forest management activities nothing is mention regarding land management decisions for the landowner to be able to continue on his or her private property to be made regarding noxious weed management, existing access roads, both primary and secondary; existing utilities regarding power lines and improvement such as fences that would have to be maintained.
- The filing of annual voluntary wildfire mitigation conservation easement monitoring report and **the landowner shall enter into an agreement** with DNRC a wildfire risk reduction plan. This should be with the land trust that the landowner has entered into under the terms of the conservation easement and part of the terms of the easement language between the landowner and the land trust, not DNRC. The landowner and the land trust can work with private land management consultants that have experience and knowledge to work on wildfire risk reduction plan and other management plan. Also this gives the landowner and the land trust the ability to build on future working relationships to meet the objectives of the plan. Why do we need to increase the number of state employees and cost to the state to administer this type of conservation easement that can be handled in the private sector between a landowner and a land trust?
- There are two statements I find conflicting and would request clarification. Section 4(b) file an annual voluntary wildfire mitigation conservation easement monitoring report with the department and Section 5(b) the department shall conduct a review of the wildfire risk reduction plan once every 5 years.



- Section 5(4)(i) you do not include in the sentence the local rural fire district and fire serviced areas, which should be part of the plan. Also I feel that a landowner should be the one that will work with his or her local fire department in obtaining any input regarding the wildfire risk reduction plan with the land trust.
- Section 5(a)(ii) may enter the property, after notice... My question why is this not more clear on how many days the notice must be sent to the landowner, does it have to be a written notice, etc. that we see in state statutes regarding utility right of ways? Why does the Department need to enter private property when such follow-up can be done at the time the annual monitoring is being conducted by the Landowner and the Land trust? The DNRC needs to recognize private property rights, lock gates, livestock concerns, the spreading of noxious weeds, and other issues of private land ownership, when one enters private property without permission outside of an emergency situation.
- Also under Section 5(4)(b) why does the language in the bill state a voluntary wildfire mitigation conservation easement holder may not enforce a wildfire risk reduction plan? Once again I see language in the bill where the relationship between a landowner who voluntarily enters into this type of easements and land trust are not working together and we are involving a state agency (DNRC) that should be their as a **technical advisor and not as a regulator** regarding the enforcement of the terms of a conservation easement between a landowner and a land trust.

I support the efforts of the sponsor regarding this bill based on the Fire Suppression Interim Committee recommendations. I feel there is language that needs to be amended that considers the private property rights of a landowner, his or her willingness to enter into this type of a **voluntary** conservation easement with a recognized land trust. The landowner must be allowed to work with private land management consulting firms that are agreed upon by the landowner and the land trust in good faith that builds working relationships.

Thank-you for the opportunity to comment and submit written comments

*/s/ Richard E. Grady*  
Richard E. Grady

Written Comments 2009 Montana Legislature  
Richard E. Brady Additional Bill Links PDF (with line numbers)  
9312 Lincoln Road West  
Canyon Creek MT 59633

SENATE BILL NO. 129

INTRODUCED BY D. LEWIS

2-4-09

BY REQUEST OF THE FIRE SUPPRESSION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE VOLUNTARY PRIVATE LAND WILDFIRE MITIGATION ACT; ESTABLISHING A VOLUNTARY PRIVATE LAND WILDFIRE MITIGATION POLICY; AUTHORIZING VOLUNTARY WILDFIRE MITIGATION CONSERVATION EASEMENTS IN THE WILDLAND-URBAN INTERFACE; AUTHORIZING WILDFIRE RISK REDUCTION PLANS; PROVIDING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH RULEMAKING AUTHORITY; ESTABLISHING A TEMPORARY TAX CREDIT FOR QUALIFYING VOLUNTARY WILDFIRE MITIGATION CONSERVATION EASEMENTS; REQUIRING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title.** [Sections 1 through 5] may be cited as the "Voluntary Private Land Wildfire Mitigation Act".

**NEW SECTION. Section 2. Voluntary private land wildfire mitigation policy.** The legislature finds and declares that:

(1) with more and more homes being built in the state's wildland-urban interface, the number of people and the value of structures, personal property, and fixtures at risk of destruction from wildfire increases substantially, dramatically inflating the cost and risk of fighting fire and dangerously stretching the capacity of firefighters to fight wildfires;

(2) increased residential development in the wildland-urban interface is creating substantial burdens on state and local government services and resources;

(3) the contribution of voluntary wildfire mitigation conservation easements and the voluntary establishment of wildfire risk reduction plans by owners of property located in the wildland-urban interface will substantially reduce the risks, costs, and burdens on local and state services associated with fighting wildfires in the wildland-urban interface;

(4) voluntary wildfire mitigation conservation easements that are granted pursuant to local and state policies that define the wildland-urban interface and that seek to reduce wildfire risks in those areas also serve important state and local land and resource conservation policies and wildfire control policies;

(5) wildfire mitigation conservation easements can help assist in the character, direction, and timing of community development; and

(6) the state of Montana should encourage voluntary actions through the use of targeted incentives for owners of real property located within the wildland-urban interface that control wildfire risk and that help reduce the burdens and costs associated with fighting wildfires.

**NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Agricultural structure" means any building or structure that is used exclusively for or in conjunction with farming, ranching, livestock, or crop production and is not used for other commercial purposes, human habitation, or recreational purposes.

(2) "Conservation easement" has the meaning provided for in 76-6-104.

(3) "Covenant" means a real property covenant created in accordance with Title 70, chapter 17, part 2.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Development area" means a designated area within a property protected by a voluntary wildfire mitigation conservation easement not to exceed 1 acre in size in which nonagricultural, commercial, and residential structures are permitted.

(6) "Qualified voluntary wildfire mitigation conservation easement holder" means a public body as defined in 76-6-104 or a qualified private organization as defined in 76-6-104 that holds a voluntary wildfire conservation easement .

(7) "Recreational structure" means a building or structure that is dedicated, in whole or in part, to commercial or noncommercial sport, exercise, training, and other leisure activities.

(8) "Related person" means a person with relationships as described in section 267(b) of the Internal Revenue Code, 26 U.S.C. 267(b).

(9) "Residential structure" means a building or structure equipped with sleeping quarters that accommodates overnight use, including residences, guest houses, bunkhouses, agricultural employee housing, and similar structures designed or used for overnight human habitation.

(10) "Servitude" means an easement or real property servitude that runs with the land in accordance with Title 70, chapter 17, part 1.

Why is local government Not Defined?

(11) "Voluntary wildfire mitigation conservation easement" means a voluntary grant of a conservation easement on and over a private property owner's property pursuant to the provisions of Title 76, chapter 6, to preserve and protect open-space lands for the purpose of reducing the risks, costs, and burdens on local and state firefighting services.

(12) "Wildfire" has the meaning provided for in 76-13-102.

(13) "Wildland-urban interface" has the meaning provided for in 76-13-102.

NEW SECTION. Section 4. Voluntary wildfire mitigation conservation easements. Subject to the provisions of [sections 1 through 5], an owner of private property in the state may grant a voluntary wildfire mitigation conservation easement only if:

(1) the property subject to the voluntary wildfire mitigation conservation easement is located in a designated wildland-urban interface as defined by:

(a) a county community wildfire protection plan under Public Law 108-148, the Healthy Forests Restoration Act of 2003;

(b) zoning regulations enacted pursuant to Title 76, chapter 2, part 2;

(c) a county growth plan pursuant to 76-1-601(3)(j)(i); or

(d) the department through an administrative rulemaking process that:

(i) identifies wildland-urban interface parcels in each county;

(ii) delineates each wildland-urban interface parcel on maps; and

(iii) ensures that the maps and information on the maps is available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33;

(2) the voluntary wildfire mitigation conservation easement complies with the provisions of Title 76, chapter 6;

(3) the voluntary wildfire mitigation conservation easement is held by a qualified voluntary wildfire mitigation conservation easement holder; *That includes those under the Montana Association of Land Trusts. FWP.*

(4) the terms of the voluntary wildfire mitigation conservation easement require:

(a) the confinement of all structures that are not agricultural structures permitted on the owner's property, including commercial structures, residences, and associated residential structures such as garages, workshops, offices, recreational structures, and all other freestanding buildings, to development areas;

(b) that the location of any development areas on the owner's property must be approved in writing by the qualified voluntary wildfire mitigation conservation easement holder and that approval may only be granted after:

*what about the Landowner?*  
(i) a written certification is provided by the property owner that a professional forester and the department both agree that the location of the proposed development area is consistent with fire protection priorities within that wildland-urban interface; and *Nothing is mentioned involving the the Landowner and the local Fire Department.*

(ii) the qualified voluntary wildfire mitigation conservation easement holder agrees that proposed development areas are consistent with protection of any other conservation purposes identified in the voluntary wildfire mitigation conservation easement;

(c) a maximum density of one development area for every 160 acres placed under conservation easement and an enforceable restriction that additional nonagricultural structures may not be permitted on fractional or remainder tracts that are also protected by the voluntary wildfire mitigation conservation easement or on adjacent properties owned by the owner or a related person if the density of residential development on those adjacent properties exceeds one residential structure for every 160 acres;

(d) an enforceable restriction on the division or subdivision of all property placed under the voluntary wildfire mitigation conservation easement into tracts of 160 acres or greater; and

(e) that the property owner conduct sound forest management activities in accordance with 76-13-115(7), including recommended best management practices for timber land management to reduce fire risk, including but not limited to:

- (i) commercial and noncommercial timber harvests;
  - (ii) thinning;
  - (iii) prescribed burns; and
  - (iv) insect and disease treatments;
- Noxious Weed Control  
• Practices, Maintaining  
• Access Roads,  
• Existing Utilities, Fences.
- (5) the property owner enters into a wildfire risk reduction plan with the department pursuant to [section 5]; and
- (6) the qualified voluntary wildfire mitigation conservation easement holder agrees to:

(a) annually monitor the property owner's compliance with the terms of the voluntary wildfire mitigation conservation easement, including but not limited to those voluntary wildfire mitigation conservation easement terms required pursuant to subsection (4); and

\* (b) file an annual voluntary wildfire mitigation conservation easement monitoring report with the department.

*why does a Landowner need to involve DNRC.  
An easement is between a Landowner/ Land Trust.*

NEW SECTION. Section 5. Wildfire risk reduction plan – department rulemaking. (1) A private property

owner in the state that grants a voluntary wildfire mitigation conservation easement shall enter into an agreement with the department to establish a wildfire risk reduction plan to reduce the risk of wildfire through land and property management activities. *to a Land Trust*

*let the Landowner choose who he wants to provide a management plan.*

(2) The terms of a wildfire risk reduction plan must include:

(a) property owner participation in a statewide forestry stewardship program or property owner participation with a professional forester to create a forest stewardship plan for the owner's property or other appropriate training and resource management programs for the property owner that are approved by the department in accordance with rules adopted pursuant to subsection (5).

(b) measures to ensure property owner compliance with best practices for development in the wildland-urban interface as provided in rules adopted pursuant to 76-13-104(8)(a); and

(c) compliance with construction techniques and materials for any new or replacement residential structures identified in rules adopted pursuant to 50-60-901.

(3) (a) The binding elements of a wildfire risk reduction plan must be established in a contract, covenant, or servitude that runs with the land for the term of the voluntary wildfire mitigation conservation easement created under [section 4]. The contract, covenant, or servitude must be recorded in the real property records of the county or counties in which the property subject to the wildfire risk reduction plan is located.

(b) The department shall conduct a review of the wildfire risk reduction plan once every 5 years.

(c) After a review is conducted pursuant to subsection (3)(b), the wildfire risk reduction plan must be updated and the property owner shall rerecord in the real property records of the applicable county or counties any elements of the wildfire risk reduction plan that reflect any new standards for construction, structure protection, or forest and wildfire risk management that have been adopted since the original plan was established pursuant to subsection (3)(a).

(4) (a) The department:

*Refer to State Statutes { Rural Fire District Fire Service Area*

(i) shall enforce the terms of a wildfire risk reduction plan to which a local fire district, a county, or the department are parties through injunction or proceedings in equity; and

(ii) may enter the property, after notice to the owner of the property that is subject to the wildfire risk reduction plan, to ensure compliance with the plan.

*proper and legal*

*Not clear - written, Number of days, Livestock concerns.*

(b) A qualified voluntary wildfire mitigation conservation easement holder may not enforce a wildfire risk reduction plan.

(5) The department shall adopt rules by October 1, 2009, that govern the creation, content, form, and requirements that must be included in a wildfire risk reduction plan subject to the provisions of this section.

**NEW SECTION. Section 6. Credit for voluntary wildfire mitigation conservation easements.** (1) An owner of real property within the state who grants a voluntary wildfire mitigation conservation easement pursuant to [sections 1 through 5] is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to the value of a voluntary wildfire mitigation conservation easement placed on property not to exceed the lesser of \$100,000 or the taxpayer's income tax liability.

(2) In order to be eligible for a credit under this section, the department of natural resources and conservation shall certify to the department that the voluntary wildfire mitigation conservation easement complies with the requirements of [section 4] and that the property owner has entered into a binding wildfire risk reduction plan pursuant to the provisions of [section 5].



(3) (a) For the purposes of this section, the value of a voluntary wildfire mitigation conservation easement must be determined by the appraisal methodology established for qualified conservation contributions in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403.

(b) An appraisal of a voluntary wildfire mitigation conservation easement must be conducted by an appraiser who is certified by the Montana board of real estate appraisers. A copy of the appraisal document must be provided to the department with the taxpayer's return in the tax year on which the credit is claimed.

(4) (a) A taxpayer may claim only one tax credit for each tax year under subsection (1), either directly or by a pass-through entity in which the taxpayer is a member or shareholder.

(b) If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsections (1) and (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 15 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(5) A taxpayer may not claim a new credit for the creation of a new voluntary wildfire mitigation conservation easement if the taxpayer has a carryover from an unused credit associated with a voluntary wildfire mitigation conservation easement granted in a prior year.

(6) The credit allowed in this section may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

(7) A credit held by an individual, either directly or as a result of a donation by a pass-through entity, survives the death of the individual and may be claimed by the decedent's estate.

(8) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

**NEW SECTION.** **Section 7. Reports to the legislature.** (1) The department of revenue shall report to the 62nd legislature, as provided in 5-11-210, on the amount of tax credits allowed under [section 6].

(2) The department of natural resources and conservation shall report to the 62nd legislature, as provided in 5-11-210, on the department's progress in implementing the provisions of [sections 1 through 5], including any recommendations for improvements.

**NEW SECTION.** **Section 8. Codification instruction.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 5].

(2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 6].

**NEW SECTION.** Section 9. Effective date. [This act] is effective on passage and approval.

**NEW SECTION.** Section 10. Applicability. [Section 6] applies to tax years beginning after December 31, 2009.

**NEW SECTION.** Section 11. Termination. [Section 6] terminates December 31, 2012.

- END -

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**Latest Version of SB 129 (SB0129.01)**

Processed for the Web on December 19, 2008 (4:42pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

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This bill in WP 5.1 | All versions of all bills (WP 5.1 format)

Authorized print version w/line numbers (PDF format)

[ NEW SEARCH ]

Prepared by Montana Legislative Services

(406) 444-3064

Wednesday – January 21, 2009

Senator Kelly Gebhardt, Chair of the Senate Natural Resources Committee and members of the committee

I submit written testimony for my support of our private timber industry and my families ranching operations that have been involved with a conservation easement with the Montana Fish, Wildlife and Parks since 1998. The lands under the Conservation Easement involved approximately 4000 acres of private classified forested lands that are bordered by the Helena National Forest and 320 acres of classified forest school trust lands leased by the ranch.

The private, state and federal classified forest lands are being affected by the pine beetle and spruce budworm infestations. They are affected by the current fire suppression actions by local governments, state and federal agencies; and the increase of the wildland-urban interface areas within the Canyon Creek Community.

The Fire Suppression Interim Committee legislative efforts on fuel reduction based on the health of our private, state and federal forests with the pine beetle and spruce budworm epidemic in Montana and other western states can be enhanced by working together on the 30 or more fire suppression bills.

We must work with the private timber and agriculture industries, which are struggling to survive given the state of our national and world economies, which have made the investment in specialized equipment. The effects of the dead and dying forest is and will affect access roads, powerlines and other infrastructure impacting all of us directly or indirectly.

I support only a portion of Senate Bill 129 and have several questions regarding the efforts of the bill having worked with my family these last 15 years when we first began working with the Montana Fish, Wildlife and Parks (FWP) on a Conservation Easement.

1. The decision between a private landowner and a conservation land trust entity takes trust; clear understanding of the conservation values that being protected and the tax implications of donating, or selling a conservation easement.
2. The stipulations that a landowner voluntary place on his or her property has to be balanced on the personal values they place on conservation practices, protecting water quality, and how an agriculture producer who has timber can continue to manage and harvest for timber production and wildlife values in the future.
3. The family worked with FWP to have the ability of managing and harvesting timber, while still maintaining the wildlife values with FWP for public use.

If we are going to address an incentive for property owners, both those that own a 1 acre lot with a house or 160 acres, that are identified within the wildland-urban interface, they provide an tax incentive for everyone to take the responsibility to manage the timber resources.

The Grady Family has completed timber harvesting on the ranch properties under the Conservation Easements and under the terms of the easement, had to develop a timber management and harvest plan, working with a private forest consultant and representatives of FWP. Fire Mitigation was part of the plan to provide tree spacing to promote a healthy timber stand, keep fires on the ground and prevent the laddering of fuels into the crown of the timber stands, develop fuel breaks, and access roads for suppression resources.

COPY

We utilized mechanized harvesting equipment that was discussed with supporting documentation to the committee on Monday January 19, 2009 under testimony in reference to Senate Bill 107 to meet some of the timber management and wildlife objectives.

I do not support a wildfire risk reduction plan that I feel can already be developed and incorporated within a forest management plan. The family has worked with a private forestry consultant with the input of FWP over the years that has meet the objectives agreed upon the family and FWP.

The requirements under Section 5 I feel are very restrictive and will only hinder any effort by a private landowner looking at this type of conservation easement, discourage sound land management practices and perhaps prevent any ability of an owner of a large classified forest owner to subdivide their properties or the transferring the property to a family member.

*Richard E. Grady*

Richard E. Grady

9312 Lincoln Road West

Canyon Creek, Montana 59633

**COPY**



"PRIVATE LAND CONSERVATION"



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## What's New at MALT

**January 12, 2009**

Voluntary Actions Can Help Control Fire Suppression Costs

**December 19, 2008**

First Phase of 'Legacy' Project Complete

**December 19, 2008**

Room to Run - County Works Out Conservation Easement for 177 Acres

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## Our Mission Statement

The Montana Association of Land Trusts' mission is to promote and support excellence in private voluntary land conservation in Montana through leadership, collaboration, education and outreach.

## About the Montana Association of Land Trusts

The Montana Association of Land Trusts is a group of 12 separate nonprofit land trust organizations working on private land conservation and voluntary conservation agreements throughout the state of Montana.

The Montana Association of Land Trusts, with offices in Helena and Whitehall, coordinates the land trust organizations from a legislative, administrative, communications and policy standpoint.

The Montana Association of Land Trusts is comprised of these 12 private, nonprofit members:

- [Prickly Pear Land Trust, Helena](#)
- [Gallatin Valley Land Trust, Bozeman](#)
- [The Trust for Public Land, Bozeman](#)
- [Flathead Land Trust, Kalispell](#)
- [Montana Land Reliance, Helena](#)
- [Five Valleys Land Trust, Missoula](#)



- [Bitter Root Land Trust, Hamilton](#)
- [The Conservation Fund, Missoula](#)
- [Rocky Mountain Elk Foundation, Missoula](#)
- [The Vital Ground Foundation, Missoula](#)
- [The Nature Conservancy of Montana, Helena](#)
- [Clark Fork-Pend Oreille Conservancy](#)

The 12 land trusts work with private landowners to obtain conservation easements that maintain working farms and ranches, protect water quality, protect wildlife habitat, preserve open lands and retain the values that make Montana such an attractive place to live, work and recreate.

Land trusts negotiate voluntary agreements with landowners that restrict commercial development and residential subdivisions on the property. In essence, land trusts acquire, and then retire, development rights of the property. Conservation easements have potential federal estate tax and federal income tax benefits for landowners. Some land trusts also are active on local or county open lands bond initiatives and several land trusts have active trails and outdoor recreation programs.

Montana land trusts have assisted private landowners in conserving over one million acres in the state since 1978.

Glenn Marx, former publisher of a weekly newspaper in Whitehall, assumed full-time duties as association's first executive director in July 2006. Glenn is a former staffer for governors Stan Stephens and Marc Racicot and for former congressman Ron Marlenee, and has extensive natural resource policy, legislative and political experience.

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- Montana Association of Land Trusts |
  - PO Box 675, Whitehall, MT 59759 |
  - 406-490-1659 |
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## About Conservation Easements

A conservation easement, simply put, protects private lands from inappropriate development.

Conservation easements are negotiated agreements between a landowner and a land trust that establishes the landowner's commitment for retaining his or her property as open lands. In essence, a conservation agreement is a voluntary legal agreement that limits the landowner's ability to develop the land, and calls for conservation of the property's natural values.

A conservation easement is negotiated between the landowner and a land trust based in part on the landowner's desires, so easements vary in intent and purpose. But easements typically restrict these land developments: Subdivision for residential or commercial activities, dumping of toxic waste, and surface mining.

It is important to note that under the terms of a conservation easement the landowner continues to own, and manage, the property. The property still produces crops, hay, livestock, timber and other commodities. The landowner still makes all the farm/ranch decisions, still pays property taxes, and because the goal of the easement is to conserve open lands, the goal of the easement is to preserve the elements of a working farm or ranch.

What the property cannot produce, under the terms of the easement, are subdivisions or industrial activities.

By state law, conservation easements must accomplish at least one of these three conservation purposes: Preservation of open space (including farmland, ranchland and forestland), preservation of a relatively natural habitat for fish, wildlife or plants, or preservation of lands for education or outdoor recreation of the general public.

The conservation agreement protects the lands in perpetuity, and the easement is recorded at the county courthouse with the county clerk and recorder. The easement is also monitored (on an annual basis) by the land trust holding the easement, and if violation occurs, the land trust enforces the terms of the easement.

Landowners who place easements on their property do so for a variety of reasons. The value of the easement can qualify as a charitable contribution and potentially be eligible for federal income tax and estate tax benefits. Remember, the easement restricts commercial, industrial and residential subdivision development of the property, so in a practical sense the land value is diminished with the easement. Since that land value is voluntarily diminished - and voluntarily diminished for conservation purposes - the landowner can potentially receive tax benefits.

In August of 2006 the President signed federal legislation expanding the federal tax incentives of conservation easement donations. These new incentives allow qualifying farmers and ranchers to shelter 100 percent of their income from federal income taxes for potentially up to 16 years.

Land trusts always encourage landowners to consult their attorney or tax advisor to fully explore the estate and income tax benefits associated with the charitable donation of a conservation easement.

In some cases, the conservation easement is sold rather than donated to the land trust. The end result is the same: Open lands, continuation of working farms and ranches, protection of wildlife habitat and preservation of what makes Montana such a unique and special place. In rare cases, the fee title of the private land is sold or donated to a land trust, and in some cases - most notably Plum Creek Timberlands property in the Blackfoot and Swan valleys - the land purchased by the land trust is later sold either to federal agencies or private conservation buyers to enhance land conservation in those areas.

In other cases, the landowner donates or in other ways conveys an easement to a land trust for more altruistic reasons. In many cases, the landowner has such a bond with - and passion for - the land that the landowner has one simple wish: To protect the land, to keep the property whole and intact, long after the landowner and the rest of us have departed.

The only way to protect private lands in perpetuity is through a conservation easement.

Some have questioned the need for conservation easements to be in perpetuity, but there are several reasons why the easements follow the land forever. One, current landowners who donate or otherwise convey a conservation easement want assurances their property will be protected not just through their lifetime, but forever. Two, federal law requires the conservation easement be held in perpetuity to qualify for federal income tax and estate tax benefits. Three, there is a concern that if conservation easements granted tax deductions and were allowed for terms - say, 20 years or 100 years - landowners could be tempted to receive the federal tax deductions for decades while speculating on lands that are rising in value, then subdivide that same property later after the term of the conservation easement expires.

Also, there are many land use decisions - on both private and public lands - that are made on a regular basis that in essence are made in perpetuity. When a county planning board and county commission vote to allow a 50-lot subdivision, and the land fills with 50 homes, there is no doubt that land will be in residential/commercial/industrial use in perpetuity.

The question of public access to conservation easement lands occasionally comes up, and the issue is addressed in the traditional Montana manner: The landowner controls access.

In many cases, land trusts work hard to enhance and expand recreational access to both private and public lands. Some members of the Montana Association of Land Trusts have active trail programs that significantly expand hiking and other recreation opportunities in their areas. Prickly Pear Land Trust in Helena has taken the lead on an ambitious rails-to-trails program in the Missouri River area and the Gallatin Valley Land Trust helps maintain and expand a large array of trails in the Bozeman area.

At a ceremony along the Madison River in July 2006, the Trust for Public Land and about 400 friends gathered to honor a conservation easement that provided hunting access to Madison Valley bottomlands and hills, greatly expanded access along the fabled Madison River, and allowed the Forest Service to establish a trailhead on private land for access to national forest lands and the Lee Metcalf Wilderness Area.

Above all, land trusts seek to protect and conserve open lands, protect and conserve wildlife habitat, protect and conserve working farms and ranches, and protect and preserve stream corridors.

The number of easements and easement acreage increase on a fairly regular basis, but association members within the Montana Association of Land Trusts hold roughly 900 easements and protect slightly less than a million acres of Montana private lands.

For more information about Montana land trusts, [click here](#).